

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 24th Floor
San Francisco, California 94105**

**NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING**

MODIFIED GUARANTEED ANNUITY REGULATIONS

RH-05048001

June 7, 2006

SUBJECT OF HEARING:

Notice is hereby given that a public hearing will be held regarding the adoption of amendments to California Code of Regulations ("CCR") Title 10, Chapter 5, Subchapter 3, Article 11.2 (Separate Account or Accounts – Modified Guaranteed Annuities) sections 2534.27 (Filing and Approval of Policy Forms) and 2534.28 (Modified Guaranteed Annuity Contract Requirements) subsections (b) (Nonforfeiture Benefits) and (c). The amendment to section 2534.27 revises that section to incorporate amendments to the National Association of Insurance Commissioners ("NAIC") Modified Guaranteed Annuity Model Regulation #255 (the "NAIC Model Regulation"). The amendments to section 2534.28 conform sections 2534.28(b) and 2534.28(c) to the NAIC Model Regulation. An additional amendment to CCR section 2534.28(b)(3) states, for purposes of clarification, that pursuant to Insurance Code section 10506.3(a), the provisions of Insurance Code Division 2, Part 2, Chapter 1, Article 3B (commencing with section 10168) regarding nonforfeiture values shall apply to nonforfeiture value calculations under the regulations, before adjustment for market value, as an absolute minimum. The proposed regulations add citations to Insurance Code sections 12921(a) and 12926 as additional authority for CCR sections 2534.27 and 2534.28.

AUTHORITY AND REFERENCE:

The Insurance Commissioner proposes the adoption of amendments to Title 10, Chapter 5, Subchapter 3, Article 11.2, Modified Guaranteed Annuity Contract Requirements, sections 2534.27 (Filing and Approval of Policy Forms), 2534.28(b) (Nonforfeiture Benefits), and 2534.29(c) pursuant to the authority vested in him by Insurance Code sections 10506(h), 10506.3(a), 12921(a), and 12926. The Commissioner's decision on the proposed amendments will implement, interpret, and make specific the provisions of Insurance Code sections 10506(h) and 10506.3(a), both of which apply to modified guaranteed annuities.

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HEARING DATE AND LOCATION:

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed regulations as follows:

Date and time: **August 8, 2006**
 10:00 am*
Location: **Department of Insurance Hearing Room**
 45 Fremont Street, 22nd Floor
 San Francisco, CA 94105

*The hearing will continue on the date noted until all testimony has been completed or 5:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS:

All persons are invited to present oral and/or written comments at the scheduled public hearing. Written comments should be addressed to the contact person:

Nancy Hom, Staff Counsel III
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4144

Questions regarding procedure, the hearing, comments, or the substance of the proposed action should be addressed to the contact person listed above. If she is unavailable, inquiries may be addressed to the backup contact person:

Bruce Hinze, Staff Counsel
California Department of Insurance
45 Fremont Street, 23rd Floor
San Francisco, CA 94105
Telephone: (415) 538-4392

DEADLINE FOR WRITTEN COMMENTS:

All persons are invited to submit written comments on the proposed regulations during the public comment period. **The public comment period will end at 5:00 p.m. on August 8, 2006.** All written comments, whether submitted at the hearing, or by U.S. mail, or by e-mail or facsimile, must be received by the Insurance Commissioner, c/o the contact person at the address listed above, no later than **5:00 p.m. on August 8, 2006.** Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE:

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: homn@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are sent to the attention of the contact person at the following facsimile number: (415) 904-5729. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the 5:00 p.m. August 8, 2006 deadline for written comments set forth above.**

ACCESS TO HEARING ROOMS:

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person(s) for the hearing in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES:

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Title 10 of the California Code of Regulations, in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address to inquire about the appropriate procedures:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST

POLICY STATEMENT OVERVIEW

Existing law (CCR section 2534.27) provides that all modified guaranteed annuity policy forms shall be submitted to the Insurance Commissioner prior to delivery or issuance for delivery in California, and no such form shall be delivered or issued for delivery in California until the use of the form has been approved in writing by the Insurance Commissioner.

Existing law requires insurers to make two calculations for the nonforfeiture benefits on cessation of premiums in modified guaranteed annuity policies. The nonforfeiture calculations must be included when the forms are filed with the Insurance Commissioner for review and approval. The requirements for the first calculation are set forth in CCR Title 10, Chapter 5, Subchapter 3, Article 11.2, section 2534.20 et

seq. The provisions of the CCR sections are derived from the NAIC's Modified Guaranteed Annuity Model Regulation #255. The second calculation is required by Insurance Code section 10506.3(a), which states in part, "Modified guaranteed annuities shall be subject to Article 3b (commencing with Section 10168) of Chapter 1 of Part 2 of Division 2 with regard to nonforfeiture values computed under the terms of the annuity but excluding from the computation the effect of market-value adjustment factors." In other words, insurers must also complete the minimum value nonforfeiture calculations required by Insurance Code sections 10168 et seq. in their modified guaranteed annuity filings as their second calculation for nonforfeiture amounts, before taking into account market value adjustment factors.

The NAIC is an organization comprised of the chief insurance regulatory officials from all 50 states, the District of Columbia, and five U.S. territories. One of the NAIC's many activities is to assist regulators with financial and market conduct regulation by fostering the development of NAIC model regulations. Individual states incorporate provisions of NAIC model regulations into their own laws to promote uniformity between the states and to incorporate new developments in insurance industry regulation into their own regulations.

The NAIC revised sections 6 and 7 of its NAIC Model Regulation in March, 2006. California Code of Regulations Sections 2534.27 and 2534.28 are based on the NAIC's Model Regulation sections 6 and 7. By and large the proposed amendments to CCR sections 2534.27 and 2534.28 are identical to or closely parallel to the revisions made by the NAIC to NAIC Model Regulation sections 6 and 7. The NAIC Model Regulations and the Department of Insurance's regulations must be updated from time to time to reflect advances in regulatory law as well as new measures to protect consumers. The changes being made also make the requirements in the regulations simpler and easier for the insurers and the regulators to implement. The proposed amendments will achieve these objectives.

In addition to the obvious benefits of reflecting advances in regulatory law, new measures to protect consumers, and simplified standards, the proposed amendments will promote uniformity of standards among different states. A number of other states have adopted older versions of the NAIC Model Regulation, and it is likely that some or all of them will eventually adopt the NAIC's 2006 revisions to the Model Regulation as well. Both insurers and consumers benefit when administrative costs related to compliance with multiple, inconsistent regulatory requirements imposed by different states are reduced. The proposed regulations tend to serve this purpose by ensuring that California's regulatory requirements in this area are as consistent with those of other states as is possible under California law. Everyone stands to benefit when insurers, operating in compliance with California law, are able to devote additional resources – resources which would otherwise be expended satisfying multiple, inconsistent regulatory regimes – to improving their financial stability or providing better products to consumers. The proposed regulations are reasonably necessary to the degree to which they help to achieve this goal.

The Commissioner also proposes amending CCR section 2534.28(b)(3) to include a statement that, in addition to the requirements in the regulations, that pursuant to Insurance Code section 10506.3(a) the nonforfeiture requirements in Insurance Code section 10168 et seq. also apply to modified guaranteed annuity filings as an absolute minimum, before adjustment for market value. This clarifies that the nonforfeiture calculation requirements set forth in the Insurance Code are in addition to, and not in place of, the nonforfeiture calculation requirements set forth in the regulations. This is reasonably necessary to eliminate confusion and to inform insurers that, in California, they must make two calculations for the nonforfeiture benefits on cessation of premiums in modified guaranteed annuity policies.

The proposed amendments to CCR sections 2534.27 and 2534.28 implement, interpret, and make specific the requirements of Insurance Code sections 10506(h) and 10506.3(a) as they apply to modified guaranteed annuities. The overall objective is to facilitate and streamline enforcement of California's minimum nonforfeiture amount calculation requirements while also promoting uniformity with NAIC standards.

SUMMARY OF EXISTING LAW; EFFECT OF PROPOSED ACTION

CCR section 2534.27. Filing and Approval of Policy Forms.

CCR section 2534.27. NAIC Model Regulation Section 6 states in part that the filing requirements applicable to modified guaranteed annuities shall be those filing requirements otherwise applicable under existing statutes and regulations of the state with respect to individual and group life insurance and annuity contract form filings, to the extent appropriate. Existing CCR section 2534.27 is California's state-specific version of this portion of section 6 of the NAIC Model Regulation. It implements the general filing requirements of NAIC Model Regulation Section 6 in a state-specific manner.

The NAIC's current version of Section 6 also states: "Filings shall include a demonstration in a form satisfactory to the commissioner that the nonforfeiture provisions of the contracts comply with Section 7B of this regulation, as well as a certification by a member of the American Academy of Actuaries as to the compliance with Section 7B." This language is not a part of the existing CCR section 2534.27.

The portion of Section 6 which requires filings to include a demonstration was not included in CCR section 2534.27 when that section was originally adopted. Even though the existing CCR section 2534.27 does not require that a demonstration be filed, most insurers include a demonstration of their nonforfeiture calculations with their filings when the filings are made with the California Department of Insurance. The demonstration helps the Department to determine whether the company's nonforfeiture calculations comply with existing law. By including the demonstration requirement in section 2534.27, the regulation will ensure that the requirement applies uniformly to every filer. The requirement itself will help to ensure that the nonforfeiture calculations upon cessation of premiums filed by the companies comply with existing law.

The portion of Section 6 which requires a certification by a member of the American Academy of Actuaries was added in 2006. Without this new provision, anyone can certify that the filing complies with applicable requirements, whether they are qualified to do so or not. The new provision requiring certification by a member of the American Academy of Actuaries ensures that the filing must be certified by someone who has had extensive actuarial education and who is subject to professional standards of practice. This requirement helps to ensure that the calculations supplied to the regulator are thorough, accurate, and in compliance with applicable requirements.

The amendments to CCR section 2534.27 incorporate the demonstration and certification language of NAIC Model Regulation Section 6 exactly, gaining the benefits of uniformity discussed earlier in this Notice. The only difference between the demonstration and certification language of Section 6 and the language now being added to CCR section 2534.27 is that instead of citing to "Section 7B" of the NAIC Model Regulation, CCR 2534.27 cites to CCR section 2534.28(b), which is the California counterpart to

NAIC Model Regulation Section 7B. The change in the citation is reasonably necessary because a citation to "Section 7B" in CCR section 2534.27 would be unclear and confusing.

Authority. The existing CCR section 2534.27 cites Insurance Code sections 10506(h) and 10506.3(a) as authority for the section. The proposed regulations add Insurance Code sections 12921(a) and 12926 as additional authority citations for this section, to clarify that the section is adopted under the Insurance Commissioner's more general authority as well as the more specific authority of sections 10506(h) and 10506.3(a).

CCR section 2534.28. Modified Guaranteed Annuity Contract Requirements.

CCR section 2534.28(b)(2)(B). Existing CCR section 2534.28(b)(2)(B) states in part: "The contract may provide that the insurer may defer payment of such cash surrender benefit for a period of six months after demand." This language is essentially the same as language in NAIC Model Regulation Section 7B.(2)(b) which was deleted earlier this year. The NAIC replaced the deleted language with the following: "The company may reserve the right to defer the payment of the cash surrender benefit for a period not to exceed six (6) months after demand therefore with surrender of the contract after making written request and receiving written approval of the commissioner. The request shall address the necessity and equitability to all policyholders of the deferral." The Project History for the NAIC Model Regulation states that the new language came directly from the Standard Nonforfeiture Law for Individual Deferred Annuities, and that it was included in the NAIC Model Regulation to achieve consistency with revisions to the Standard Nonforfeiture Law for Individual Deferred Annuities.

The amended CCR section 2534.28(b)(2)(B) deletes the language that the NAIC deleted and replaces it with the new NAIC language word-for-word, except that it corrects a misspelling by substituting "therefor" for "therefore." These changes amend CCR section 2534.28(b)(2)(B) to make it consistent with the current NAIC Model Regulation, the NAIC Standard Nonforfeiture Law for Individual Deferred Annuities Model #805, and Insurance Code section 10168.1(b) of California's Standard Nonforfeiture Law for Individual Deferred Annuities. This revision achieves uniformity with these other widely used regulatory standards, and uniformity in generally applicable standards is desirable for the reasons stated above. In addition, the substance of the revision favors consumers. The language being deleted from CCR section 2534.28(b)(2)(B) allowed insurers to defer payment of the cash surrender value of a modified guaranteed annuity for six months. The new language allows such deferrals "for a period not to exceed six (6) months," a wording which emphasizes that distributions to the contractholder may be made in less than six months. In addition, the new language makes the right to defer payment contingent upon the insurer applying for and receiving written approval for the deferral from the Insurance Commissioner, after demonstrating that the deferral is necessary and equitable to all policyholders. This is a new requirement intended to prevent insurers from arbitrarily withholding payment.

Existing CCR section 2534.28(b)(2)(B) is amended to change the citation to "Paragraph (6)" to a citation to "Paragraph (8)." This change is necessary because the existing paragraph (6) in section 2534.28(b) is being renumbered as paragraph (8). References to the old paragraph (6) must be renumbered to reflect this change, to prevent confusion and to avoid changing the substance of the cross-reference within the regulations.

CCR section 2534.28(b)(3). Proposed CCR section 2534.28(b)(3) is amended. The first amendment is the insertion of the provision stating that, pursuant to Insurance Code section 10506.3(a), the provisions of Insurance Code Article 3B of Chapter 1 of Part 2 of Division 2 with regard to nonforfeiture values shall apply to the Unadjusted Minimum Nonforfeiture Amount, as an absolute minimum. The Unadjusted Minimum Nonforfeiture Amount is defined in the existing regulation. This new provision alerts the reader to a significant difference between existing California law and NAIC Model Regulation Section 7B.(3), on which CCR section 2534.28(b)(3) is based. Under California law, the nonforfeiture calculation requirements set forth in the Insurance Code, and made applicable to modified guaranteed annuities by section 10506.3(a), are in addition to the nonforfeiture calculation requirements set forth in the regulations. To our knowledge, the NAIC Model Regulation does not have a provision which would make the equivalent of California's statutory nonforfeiture law applicable to modified guaranteed annuities. To eliminate confusion on this issue, the regulation has been amended to add the language referencing Insurance Code section 10506.3(a), so that it is clear that under California law the statutory requirements apply as an absolute minimum, before adjustment for market value, in addition to the requirements in the regulations. In other words, under California law, when insurers make their form filings with the Insurance Commissioner they must make two calculations for the nonforfeiture amounts in modified guaranteed annuity policy forms rather than just one.

Existing CCR section 2534.28(b)(3) has also been amended as follows: the words "percentages of" and "percentage of" have been deleted, and the citation to "Paragraph (4)" has been changed to a citation to "Paragraph (6)." These changes to CCR section 2534.28(b)(3) conform section 2534.28(b)(3) to the most recent version of NAIC Model Regulation Section 7B.(3), on which section 2534.28(b)(3) is based. In addition to making the revised regulation clearer, making the regulation consistent with the NAIC Model Regulation on which it is based reduces insurers' administrative costs related to compliance with multiple regulatory requirements. If CCR section 2534.28(b)(3) is not amended to conform to the NAIC Model Regulation, California will have an increasingly out-of-date and inconsistent calculation requirement for its form filings, while other states will eventually adopt and follow the newest version of the NAIC Model Regulation. California saves insurers money and promotes more uniform regulatory standards by revising CCR 2534.28(b)(3) to conform it to the most recent version of the NAIC Model Regulation.

The citation in existing CCR section 2534.28(b)(3) to "Section 2534.22(d)" is a typographical error: no such subsection exists. To eliminate confusion, this error has been corrected by the amendment to CCR section 2534.28(b)(3) which deletes the citation to "2534.22(d)" and inserts a citation to "2534.21," which is the correct citation, and the corrected citation corresponds to the equivalent citation in the NAIC Model Regulation.

Existing CCR section 2534.28(b)(3) subparagraphs (A), (B), (C) (with subparts), and (D) have been changed. Subparagraph (A) is deleted in its present form, but the language of subparagraph (A) has been retained and labeled as a new subparagraph (A), with the addition of a requirement that the withdrawal amount be increased by interest credits. This provision clarifies that the insurer may increase the amount the contractholder has taken out of his or her account, either as a withdrawal or partial surrender, to add the interest that the insurer is charging the contractholder to the amount taken out. This change reflects industry practice and conforms section 2534.28(b)(3)(A) to the NAIC Model Regulation.

Existing CCR section 2534.28(b)(3)(B) has been re-written to conform to the NAIC Model Regulation subparagraph (D). The existing section 2534.28(b)(3)(B) is therefore deleted and replaced with a new

subparagraph (D), which sets forth essentially the same requirement but which uses language that is the same as in the NAIC Model Regulation. The NAIC language is clearer than the existing regulation language, because it explains that the amount of indebtedness referred to is the amount of indebtedness "to the company" on the contract.

Existing CCR section 2534.28(b)(3)(C) is deleted and replaced with a new paragraph (B). The existing paragraph (C) requires insurers to review records for each past year in question to determine whether the two percent contract value less the amount of any annual contract charges deducted from any gross considerations credited to the contract during that contract year would be less than \$30.00. This requires the insurer to review a certain amount of historical data on each contract to determine an amount that may be less than \$30.00. The new paragraph (B) sets forth a streamlined way of determining the annual contract charge, by simply stating it as a flat \$50 charge, increased by interest credits. The new method does not require insurers to review as much data in order to make the calculation. It is easy for all parties to understand, and it is easy for regulators to verify. The increase in the amount is due to the passage of time and change in financial conditions since CCR section 2534.28(b)(3) became operative over fourteen years ago. It is also offset somewhat by the deletion of existing paragraph (D), which allows the insurer to impose a \$10 transaction charge for each transfer to another investment division within the same contract. The deletion of existing paragraph (D) and the other changes described above conform CCR section 2534.29(b)(3) to the NAIC Model Regulation, with all of the benefits that flow from that standardization. These changes also make the proposed regulation consistent with Insurance Code section 10168.25 of California's Standard Nonforfeiture Law for Individual Deferred Annuities.

CCR section 2534.28(b)(3) is amended by adding a new paragraph (C), which provides that the insurer may reduce a nonforfeiture amount by any premium tax it has paid for the contractholder's contract, increased by interest credits. This change conforms section 2534.28(b)(3) to the NAIC Model Regulation. This change also makes the proposed regulation consistent with Insurance Code section 10168.25 of California's Standard Nonforfeiture Law for Individual Deferred Annuities. The amended CCR section 2534.28(b)(3) now includes the text of the drafting note from the NAIC Model Regulation concerning paragraph (C). The drafting note has been included as part of the text of CCR 2534.28(b)(3) because it clarifies the circumstances under which the premium tax credit referred to in paragraph (C) is permitted.

The citation to "Section 4" in subparagraphs (A), (B), and (C) of the NAIC Model Regulation is changed in CCR section 2534.28(b)(3) subparagraphs (A), (B), and (C) to be a citation to CCR Section "2534.21." The change in the citation directs the reader to the CCR counterpart to the NAIC Model Regulation's "Section 4." A citation to "Section 4" in the context of CCR section 2534.28(b)(3) would be unclear and confusing.

The benefits of amending CCR section 2534.28(b)(3) to conform it to the NAIC Model are stated above. There is also an additional benefit in conforming the regulation to the NAIC Model Regulation. The relevant provisions of the NAIC Model are generally consistent with the Standard Nonforfeiture Law for Individual Deferred Annuities. California adopted its version of the Standard Nonforfeiture Law for Individual Deferred Annuities as Insurance Code section 10168 et seq. Products subject to the NAIC Model Regulation can have many similarities to products subject to the Standard Nonforfeiture Law for Individual Deferred Annuities. It makes sense for products with certain similarities to be governed by statutes and regulations which reflect those similarities.

Existing CCR section 2534.28(b)(3) contains two unnumbered subparagraphs. These two unnumbered paragraphs are now numbered as subparagraphs "(4)" and "(5)" in the amended regulations. The insertion of paragraph number "(4)" at the beginning of the first unnumbered paragraph and the insertion of paragraph number "(5)" at the beginning of the second unnumbered paragraph will make it easier to identify each paragraph precisely and make the format of the regulation more uniform.

CCR section 2534.28(b)(4). Existing CCR section 2534.28(b)(4) is being deleted and replaced by a new section 2534.28(b)(6). Existing section 2534.28(b)(4) is the same as the NAIC Model Regulation Section 7B.(4) which was deleted in its entirety in the recently revised NAIC Model Regulation. The language being added to CCR section 2534.28(b) as the new section 2534.28(b)(6) is exactly the same as the language the NAIC added to its revised Model Regulation as Section 7B.(6) (with the exception of the citation to "Paragraph 3" of the NAIC Model, which, for clarity and to retain the original meaning, in the California version is a citation to Paragraph 3's California counterpart, "subsection 2534.28(b)(3)").

The existing CCR section 2534.28(b)(4) sets forth a rather involved method for calculating the percentages of net considerations used to define the minimum nonforfeiture amount. The calculation must take into account annual charges of \$30 or \$75 (depending upon the type of contract), collection charges of \$1.25, charges for premium taxes, and percentages of net considerations which vary from 65% to 90% depending upon the type of contract and contract year in question. The contract charges must be multiplied by the ratio of the Consumer Price Index for June of the calendar year preceding the date of filing to the Consumer Price Index for June 1979.

These complicated calculation requirements are replaced by CCR section 2534.28(b)(6), which provides that the net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to 87.5% of the gross considerations credited to the contract during that contract year. The new requirement is a simple percentage calculation. It does not require taking into account various amounts of money, some as small as \$1.25. It is easy for all parties to understand, and it is easy for companies to perform and for regulators to verify. In addition, it is consistent with the nonforfeiture calculation requirements of the Model Standard Nonforfeiture Law for Individual Deferred Annuities, and with Insurance Code section 10168.25 of California's Standard Nonforfeiture Law for Individual Deferred Annuities.

The changes to CCR section 2534.28(b)(4) are necessary to conform the minimum nonforfeiture amount calculation to the calculation in the NAIC Model Regulation. As explained above, making the regulation consistent with the NAIC Model Regulation reduces administrative costs, prevents increasingly out-of-date and inconsistent form filing requirements, saves money, promotes more uniform regulatory standards, reflects changing conditions and simplifies application of the regulation for all concerned.

CCR section 2534.28(b)(6). Existing CCR section 2534.28(b)(6), renumbered as CCR section 2534.28(b)(8), contains a typographical error: the existing text states that "the cash surrender benefit...shall not be less than the Minimum Nonforfeiture Amount..." The regulation has been amended to delete the word "that" and insert the word "than" in its place. This corrects the typographical error and clarifies the text of the regulation.

CCR section 2534.28(b)(5), (6), (7), (8), and (9). Existing CCR subsections 2534.28(b)(5), (6), (7), (8), and (9) have been renumbered as subsections (7), (8), (9), (10), and (11), respectively, in order to keep the numerical organization of section 2534.28(b) internally consistent and to prevent confusion.

CCR section 2534.28(b)(8). Existing CCR section 2534.28(b)(8), renumbered as CCR section 2534.28(b)(10), has been amended by the insertion of a comma in subsections (A) and (B) immediately after the first word "If" in each subsection. The insertion of the two commas conforms the subsections to the punctuation in the NAIC Model Regulation on which they are based, without changing the substance or meaning of either subsection.

CCR section 2534.28(b)(9). The last sentence of existing CCR section 2534.28(b)(9) reads as follows: "Notwithstanding the provisions of Subparagraph 2534.28(b) additional benefits payable under the following conditions." The proposed regulations amend CCR section 2534.28(b)(9) by inserting the word "are" between the words "benefits" and "payable" in order to clarify the sentence and have it read properly, and renumbers the section as CCR section 2534.28(b)(11). The omission of the word "are" in the existing regulation was an error.

CCR section 2534.28(b)(10). Existing CCR section 2534.28(b)(10) refers to the annual contract charge, the collection charge of \$1.25 per collection, the transaction charge of \$10, the single consideration contract charge of \$75, and adjustments based on the Consumer Price Index, the same items that are currently contained in CCR section 2534.28(b)(4) and which are being deleted as explained above. It makes no sense to delete the standards set forth in existing CCR section 2534.28(b)(4) and replace them with the standard in the new CCR section 2534.28(b)(6) and yet retain the old standards of CCR section 2534.28(b)(10), which parallel the deleted provisions of CCR section 2534.28(b)(4). In order to remain consistent with the new CCR section 2534.28(b)(6) and the NAIC Model Regulation it is necessary to delete CCR section 2534.28(b)(10), for the same reasons CCR section 2534.28(b)(4) was deleted and replaced with CCR section 2534.28(b)(6).

CCR section 2534.28(c). Existing CCR section 2534.28(c) has been amended to add a title, "The Application." This change makes section 2534.28(c) now entirely the same as NAIC Model Regulation section 7C, on which section 2534.28(c) is based. In addition, existing sections 2534.28(a) and 2534.28(b) both have titles, but 2534.28(c) does not. The amendment adding a title to 2534.28(c) makes it consistent with the format of sections 2534.28(a) and 2534.28(b) without changing the meaning or substance of the paragraph.

Authority. The existing CCR section 2534.28 cites Insurance Code sections 10506(h) and 10506.3(a) as authority for the section. The proposed regulations add Insurance Code sections 12921(a) and 12926 as additional authority citations for this section, to clarify that the section is adopted under the Insurance Commissioner's more general authority as well as the more specific authority of sections 10506(h) and 10506.3(a).

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS:

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO ANY STATE OR LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING:

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE:

The Commissioner has made an initial determination that the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are insurance companies. Insurance companies may incur some costs as a result of changing the nonforfeiture calculations in modified guaranteed annuity form filings made after the effective date of the regulations, so that the calculations meet the requirements of the regulations. They may also incur some expenses related to reprinting forms. The Commissioner has considered performance standards, but the Commissioner has identified no performance standards that would be as effective as the proposed regulations to update the existing regulations, to amend the existing regulations to conform them to the revised NAIC Model Regulation, or to enforce the statutes that form the basis for the proposed regulations. The Commissioner has not considered other proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses;
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses;
- (iii) The use of performance standards rather than prescriptive standards;
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES:

The Commissioner has determined that for insurance companies subject to the proposed regulations there is likely to be some cost impact, although it will most likely be minimal. The cost impact would be the cost of changing the nonforfeiture calculations in future modified guaranteed annuity form filings so that the calculations meet the requirements of the regulations. Insurers may also incur some expenses related to reprinting forms. However, insurers would incur greater expense if the existing CCR sections 2534.27 and 2534.28 are not revised to comply with the most recent NAIC Model Regulation, because while other states would be adopting and following the newest version of the NAIC Model Regulation, California would still be requiring an increasingly out-of-date and inconsistent calculation in its form filings. In the long run, by amending California's regulations to keep them current with changes to the NAIC Model Regulation on which they are based, California is saving insurers money by promoting more uniform requirements.

Consumers benefit from stricter filing requirements and the provisions limiting insurers'

ability to defer payment of cash surrender value. Whether an insurer or a consumer benefits financially from the revised non-forfeiture calculation depends on the circumstances of each annuity.

To the extent the proposed regulations reference existing California statutory requirements for modified guaranteed annuity calculations, the proposed regulations merely clarify existing legal requirements and do not create new costs or expenses.

FINDING OF NECESSITY:

The Commissioner finds that it is necessary for the welfare of the people of the State that the regulations apply to businesses.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA:

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within the State of California, and the expansion of businesses currently doing business within the State. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS:

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES:

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

IMPACT ON SMALL BUSINESS:

The Commissioner has determined that the proposed regulations will not affect small businesses. The proposed regulations affect insurers. Pursuant to Government Code section 11342.610(b)(2), insurers are not small businesses.

COMPARABLE FEDERAL LAW:

There are no existing federal regulations or statutes comparable to the proposed regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS:

The Department has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed

regulations. Upon request, the Initial Statement of Reasons will be made available for inspection and copying. Requests for the Initial Statement of Reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. Requests for the Final Statement of Reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the Initial Statement of Reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying by prior appointment at 45 Fremont Street, 24th Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING:

A copy of the proposed regulations and this Notice (including the Informative Digest, which contains the general substance of the proposed regulations) will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS:

Documents concerning this proceeding will be available on the Department's website. The documents shall include the proposed regulations, the Notice of Hearing and Informative Digest, the Initial Statement of Reasons, and, when it has been prepared, the Final Statement of Reasons. To access documents concerning this proceeding, go to <http://www.insurance.ca.gov>. Find the link "QUICK LINKS" in blue in the middle of the screen. Click on the link for "Legal Information" under the "QUICK LINKS" link, then click on the "Proposed Regulations" link. Click on the redirection link and when the search field appears, enter 'RH05048001' (the Department's regulation file number for these regulations).

MODIFIED LANGUAGE:

If the regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

Dated: June 7, 2006

JOHN GARAMENDI
Insurance Commissioner

By: /s/
Mansour Salahu-Din
Assistant Chief Counsel